

verified any of the materials submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Taxpayer and Company 1 are domestic corporations wholly owned by Individual 1 and Individual 2. The ownership percentages of Individual 1 and Individual 2 in Taxpayer are the same as those of Individual 1 and Individual 2 in Company 1. Taxpayer was formed for the sole purpose of qualifying and operating as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer operates under a commission arrangement with Company 1.

In Year 1, Accounting Firm and Company 1 discussed the benefits of forming an IC-DISC. Pursuant to these discussions, Company 1 asked Accounting Firm to arrange for the formation and qualification of Taxpayer as an IC-DISC. Accounting Firm in turn engaged Company 2 and Law Firm to incorporate Taxpayer and prepare other relevant documents. Taxpayer was incorporated on Date 1. Accounting Firm prepared a Form 4876-A and mailed it to Taxpayer on Date 2 with instructions on how to file the form. Accounting Firm did not discuss with Taxpayer or describe in the instructions the due date for filing Form 4876-A. According to Taxpayer's records, the election was signed and mailed on Date 3 (i.e., during the first 90 days of its first taxable year and approximately ten days prior to the end of that 90-day period). Thus, Taxpayer suggests that its election must have been received by the IRS before the end of the 90-day period and, in the alternative, asserts that its advisors never told Taxpayer about the deadline for filing the DISC election.

Believing all the requirements to conduct business and be treated as an IC-DISC for its first taxable year were satisfied, Taxpayer began acting as an IC-DISC as of its date of formation. In Year 2, Taxpayer filed Form 1120-IC-DISC for Taxpayer's first taxable year. In Year 3, Taxpayer filed Form 1120-IC-DISC for Taxpayer's second taxable year. After filing the Form 1120-IC-DISC for Taxpayer's second taxable year, Taxpayer received correspondence from the Service that Taxpayer's Form 4876-A was received after the due date for the election.

Taxpayer has requested a ruling that grants an extension of time of 60 days from the date of the ruling letter to file Form 4876-A and that such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC¹ shall be made by such corporation for a taxable year at any time during the 90-day

¹ As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Pursuant to a Power of Attorney on file in this office, copies of this ruling letter are being furnished to your authorized representatives.

Sincerely,

Christopher J. Bello
Chief, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: